Supreme Court, U.S.
FILED

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No. 00-

IN THE
Supreme Court of the United States

DENNIS E. NIXON and LORIE A. NIXON,

Petitioners,

v.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. DID SHANNON NIXON HAVE A RIGHT TO REFUSE MEDICAL CARE PURSUANT TO HER RIGHT TO PRIVACY AS GUARANTEED BY THE UNITED STATES CONSTITUTION, THUS NEGATING THE PARENTAL DUTY TO PROVIDE MEDICAL CARE?

II. DID THE PROSECUTION AND CONVICTION OF THESE PETITIONERS VIOLATE THEIR AND THEIR DAUGHTER'S ABSOLUTE RIGHT TO FREE EXERCISE OF THEIR RELIGION UNFETTERED FROM INTERFERENCE BY THE STATE?

TABLE OF CONTENTS

Page

Questions Presented for Review i

Table of Contents ii

Table of Cited Authorities iii

Table of Appendices vii

Opinions Below 1

Statement of Jurisdiction 1

Constitutional Provisions Involved 1

Statement of the Case 2

Reasons for Granting the Writ 7

I. Shannon Nixon Had A Right To Refuse Medical Care Pursuant To Her Right To Privacy As Guaranteed By The United States Constitution, Thus Negating The Parental Duty To Provide Medical Care. 7

II. The Prosecution And Conviction Of These Petitioners Violates Their And Their Daughter's Absolute Right To Free Exercise Of Their Religion Unfettered From Interference By The State. 12

Conclusion 17

TABLE OF CITED AUTHORITIES

Page

Cases:

Bellotti v. Baird, 443 U.S. 622, 99 S. Ct. 3035, 61 L. Ed. 2d 797 (1979) 9, 10

Breed v. Jones, 421 U.S. 519, 95 S. Ct. 1779, 44 L. Ed. 2d 346 (1975) 9

Buck v. Bell, 274 U.S. 200, 47 S. Ct. 584, 71 L. Ed. 1000 (1927) 11

Cohen v. California, 403 U.S. 15, 91 S. Ct. 1780, 29 L. Ed. 2d 284 (1971) 8

Goss v. Lopez, 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975) 9

Griswold v. Connecticut, 381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965) 8

H.L. v. Matheson, 450 U.S. 398, 101 S. Ct. 1164, 67 L. Ed. 2d 388 (1981) 10

In re Duran, 2001 Pa. Super. 52 (decided February 21, 2001) 16

In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967) 9

In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970) 9

Cited Authorities

Page

In the Matter of Conroy, 486 A.2d 1209 (N.J. 1985) 16

Jacobson v. Massachusetts, 197 U.S. 11, 25 S. Ct. 358, 49 L. Ed. 643 (1905) 11

Katz v. United States, 389 U.S. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967) 8

Mapp v. Ohio, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961) 8

Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1062, 16 L. Ed. 2d 694 (1966) 8

Murphy v. Waterfront Com. of New York Harbor, 378 U.S. 52, 84 S. Ct. 1594, 12 L. Ed. 2d 678 (1964) 8

NAACP v. Alabama, 357 U.S. 449, 78 S. Ct. 1163, 2 L. Ed. 2d 1488 (1958) 8

Paul v. Davis, 424 U.S. 693, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976) 8

Prince v. Massachusetts, 321 U.S. 158, 64 S. Ct. 438, 88 L. Ed. 645 (1944) 14

Reynolds v. United States, 8 Otto 145, 98 U.S. 145, 25 L. Ed. 244 (1878) 14

Cited Authorities

	Page
Roe v. Wade, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973)	8, 11
Stanley v. Georgia, 394 U.S. 557, 89 S. Ct. 1243, 22 L. Ed. 2d 542 (1969)	8
Tinker v. Des Moines School District, 393 U.S. 503, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969)	9
Union Pacific Railway Co. v. Botsford, 141 U.S. 250, 11 S. Ct. 1000, 35 L. Ed. 734 (1891)	9
West Virginia State Board of Education v. Barnette, 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628 (1943)	15
Whalen v. Roe, 429 U.S. 589, 97 S. Ct. 869, 51 L. Ed. 2d 64 (1977)	9
Wisconsin v. Yoder, 406 U.S. 205, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972)	15
United States Constitution:	
First Amendment	1, 8, 12, 15
Third Amendment	8
Fourth Amendment	8
Fifth Amendment	8

Cited Authorities

	Page
Sixth Amendment	9
Ninth Amendment	2, 8
Fourteenth Amendment	13
Statutes:	
18 Pa. C.S.A. § 2504	2
18 Pa. C.S.A. § 4304	2
23 Pa. C.S.A. § 6303(b)(3)	13
28 U.S.C. § 1257(a)	1

TABLE OF APPENDICES

Page

Appendix A — Opinion Of The Supreme Court Of Pennsylvania Dated And Decided November 27, 2000 ..... 1a

Appendix B — Opinion Of The Superior Court Of Pennsylvania Dated And Filed September 21, 1998 ..... 20a

Appendix C — Pa. R.A.P. Rule 1925 Order Of The Court Of Common Pleas, Blair County, Pennsylvania Dated And Filed July 16, 1997 ... 32a

Appendix D — Orders Of The Court Of Common Pleas Of Blair County, Pennsylvania Dated February 11, 1997 And Filed February 14, 1997 ..... 33a

OPINIONS BELOW

The November 27, 2000 opinion of the Supreme Court of Pennsylvania, whose judgment is herein sought to be reviewed, is published at 761 A.2d 1151 and is reprinted in Appendix A to this Petition.

The prior opinion of the Superior Court of Pennsylvania, entered September 21, 1998, was published at 718 A.2d 311 (Appendix B).

The Orders of the Court of Common Pleas of Blair County, Pennsylvania at Criminal No. 1260 and 1261 CR 1996 are not published and are reprinted in Appendix C and D, respectively.

STATEMENT OF JURISDICTION

The judgment of the Pennsylvania Supreme Court was entered on November 27, 2000. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Amendment I:

> **Freedom of Religion, Speech and Press; Peaceful Assemblage; Petition of Grievances**
>
> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

Constitution of the United States, Amendment IX:

> **Construction of Enumerated Rights**
>
> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

STATEMENT OF THE CASE

Petitioners were arrested on September 5, 1996 and charged with violations of 18 Pa. C.S.A. § 2504, Involuntary Manslaughter, and 18 Pa. C.S.A. § 4304, Endangering the Welfare of Children. These charges were filed as a result of the death of the couple's sixteen-year-old daughter, Shannon, on June 21, 1996. Subsequently, the district attorney of Blair County, Pennsylvania, filed a criminal information against both Petitioners, charging the above named criminal offenses. On October 10, 1996, Attorney Steve Passarello, on behalf of both Petitioners, filed an Omnibus Pretrial Motion and raised the federal and state constitutional questions at the earliest opportunity, *i.e.*, when pretrial motions were filed in the trial court in accordance with the requirements of the Pennsylvania Rules of Criminal Procedure. (17A)[1] Petitioners also raised the affirmative defense that the victim, Shannon Nixon, was a mature minor, who was able to make health care decisions on her own and that she, acting in that capacity, chose to follow her own and her parents' religious beliefs in refusing any medical treatment.

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1. References to page numbers followed by the letter "A" refer to the Reproduced Record filed in the Supreme Court of Pennsylvania in this case.

On February 11, 1997, Petitioners' Omnibus Pretrial Motion was argued before the Honorable Norman D. Callan. Though no testimony was presented, trial counsel offered to call the Petitioners to testify as to the maturity of their daughter in support of the motion. This offer was refused by the trial court.

Petitioners argued, both at the pretrial and trial stages of the trial court proceedings, that Shannon's age (three days shy of her seventeenth birthday at the time of her death), relieved the Petitioners of the statutory duty to provide medical care to her and to force her to subject to medical care against her own religious beliefs. The trial court dismissed this claim, without prejudice to raise it later if the evidence at trial raised a question of emancipation. Instead, the trial court held that the statute was a strict liability crime, imposing criminal responsibility upon the Petitioners for neglect of their parental duty to a child under the age of eighteen, without regard to the child's religious beliefs, the Petitioners' religious beliefs, or the maturity of the child.

On April 21, 1997, Petitioners proceeded to a jury trial, which concluded on April 22, 1997. The trial court denied the Petitioners' motions for judgment of acquittal and refused to instruct the jury that the maturity of Shannon Nixon could be considered in determining whether the Petitioners violated a parental duty of care to provide medical treatment. By jury verdict, both Petitioners were convicted of all charges.

Petitioners each were sentenced on June 10, 1997 outside the permissible range of the Pennsylvania Commission on Sentencing Guidelines and to the statutory maximum of not less than two and one-half nor more than five years incarceration. A timely appeal to the Pennsylvania Superior

Court was filed on June 24, 1997. The trial court did not file an opinion in support of its rulings, but filed the statement attached to this Petition in the Appendix.

By Opinion and Order dated September 21, 1998, the Pennsylvania Superior Court affirmed the judgments of conviction. Petitioners' Petition for Allowance of Appeal to the Pennsylvania Supreme Court was granted and, by Opinion and Order dated November 27, 2000, the Orders of the Superior Court and the judgments of sentence of the trial court were affirmed.

Petitioners Dennis and Lorie Nixon are the parents of eleven children, as well as the deceased, Shannon Nixon. For three generations, the Nixon family have been members of the Faith Tabernacle Church. This religion, founded upon Christianity and founded in 1897 in Philadelphia, Pennsylvania, has as one of its tenets the belief in the healing of the body through prayer. Because the members of this religious sect find support in the passages of the Bible (James, Chapter 5, Verses 14 and 15)[2], they decline to be treated for any illness by intrusive medical services, relying instead upon the power of prayer. Shannon Nixon, the Petitioners' daughter, was sixteen years old, three days short of her seventeenth birthday at the time of her death. She, like her parents, was a devout follower and member of the Faith Tabernacle Church. She was baptized and joined the church at age eleven, attended church services regularly and was educated at the Faith Tabernacle School. Shannon was a responsible young adult and an independent young adult. She traveled frequently to

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2. "When we are sick we are to call for the elders of the church, to pray over them, anointing them with oil. And the prayer of faith would save the sick. And the Lord would raise them up." (311A)

Philadelphia and to New Jersey to visit with friends who were also members of her church. She had been employed by her father's company (Signature Door Co., Inc., of Altoona, Pennsylvania) and had previously worked as a teacher's aide at her school. While working as a teacher's aide, Shannon had signed and received an exemption from the requirements of the Worker's Compensation Law in Pennsylvania, as well as an exemption from the Social Security Act; both exemptions based upon her religious beliefs.

On Sunday, June 16, 1996, Shannon returned home from a trip to Philadelphia at approximately 10:30 p.m. Petitioner Lorie Nixon testified that she thought that something may have been wrong with her daughter at that time, but Shannon said nothing to her mother then. Mrs. Nixon mentioned her feeling to her husband, Dennis, and they agreed to "take a stand" in accordance with the tenets of their faith and to pray together for Shannon. On Tuesday morning, June 18, 1996, Shannon expressed some concern to her mother about her health. She thought that she may have been losing weight, and she seemed to be drinking an inordinate amount of water. At that time, Shannon herself asked her parents to contact their pastor so that she could be anointed, the prescribed method for treating illness pursuant to the Faith Tabernacle Church. Shannon went with her parents to the home of their pastor, who happened to be her grandfather, Pastor Nixon. There she was anointed with oil and the parties joined in a prayer of faith and healing in accordance with the teachings of the Scriptures and of their faith. After the anointing, Shannon and her father went to work at Signature Door, and they both stayed at work the remainder of that day without incident.

On Wednesday morning, June 19, 1996, Shannon complained of dizziness and made the decision to stay home from work. That evening, when the family departed for their regular worship service, Shannon declined to attend and chose to stay home and listen to a taped sermon. While at home on that evening, Shannon spoke with her friend, Sherry Chandler. She told Sherry that she wasn't feeling well and would not be able to travel to Philadelphia on the following weekend. She also told Sherry that she was looking to God for her victory. Upon the family's return from church services, an upbeat Shannon answered the door and indicated to her parents that her symptoms had alleviated and that she had received her victory. A "victory" as defined in their faith, indicates that her prayer of healing had been answered.

In the early morning hours of Thursday, June 20, 1996, Shannon woke her mother and asked for her help in getting something to eat. After eating some chicken noodle soup, Shannon became sick and could not keep food in her stomach. Her vomiting persisted throughout the day until dinnertime, when Lorie Nixon again contacted Pastor Nixon and asked for an agreement in prayer. An agreement in prayer consists of both Lorie Nixon and other members of the faith praying for the symptoms to abate. Shortly thereafter, Shannon began to maintain food in her stomach and was not vomiting. During the evening hours of Thursday, Shannon spoke to her older brother, Dennis Nixon, Jr. In response to his query about her health, she replied that the devil was fighting hard, but was not going to win.

On Friday, June 21, 1996, Shannon was very weak. Both her parents stayed by her side in prayers throughout the day. At approximately noon time, Pastor Nixon arrived and the family stood together in prayer. About 4:00 p.m. that day,

Shannon became unresponsive to questions and at 7:30 p.m., Pastor Nixon contacted the funeral home and told them that Shannon had passed away. At no time during these several days did Shannon ever express a desire to treat with or to see a doctor. Had she expressed such a wish, both Petitioners would have honored and acceded to her wishes and supported that decision.

Shannon's body was removed from the family home and delivered to the hospital. An autopsy was performed, and it was determined that she died of complications related to the rapid onset of diabetes acidosis. This condition, though treatable, is incurable. It requires a steady maintenance of insulin by way of insulin injections given at a minimum of one each day, and possible as many as three per day. Refusal at any time to continue insulin treatment would result in a 100% chance of fatality. Following the autopsy, the City of Altoona police department initiated these criminal proceedings.

REASONS FOR GRANTING THE WRIT

I.

SHANNON NIXON HAD A RIGHT TO REFUSE MEDICAL CARE PURSUANT TO HER RIGHT TO PRIVACY AS GUARANTEED BY THE UNITED STATES CONSTITUTION, THUS NEGATING THE PARENTAL DUTY TO PROVIDE MEDICAL CARE.

The right to privacy is protected by the United States Constitution. While no specific guarantee of a right of privacy is to be found in the Constitution, this Court has said that zones of privacy are created by the more specific

constitutional guarantees — the so-called penumbra of constitutional rights — and governmental intrusion into these zones is thereby limited. *See, e.g., Paul v. Davis*, 424 U.S. 693, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976); *Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973). This right of privacy is a fundamental one, said to be a right older even than the Bills of Rights. *Roe v. Wade, supra*; *Griswold v. Connecticut*, 381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965). The roots of the right may be found in the penumbra of various specific constitutional provisions such as the First Amendment's guarantee of freedom of speech and press, *see, e.g., Roe v. Wade, supra*; *Cohen v. California*, 403 U.S. 15, 91 S. Ct. 1780, 29 L. Ed. 2d 284 (1971); *Stanley v. Georgia*, 394 U.S. 557, 89 S. Ct. 1243, 22 L. Ed. 2d 542 (1969); and of freedom of association, *see, e.g., NAACP v. Alabama*, 357 U.S. 449, 78 S. Ct. 1163, 2 L. Ed. 2d 1488 (1958); the Third Amendment's prohibition against the peacetime quartering of soldiers in any house without the consent of the owner, *see, e.g., Katz v. United States*, 389 U.S. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967); the Fourth Amendment's prohibition of unreasonable searches and seizures, *see, e.g., Roe v. Wade, supra*; *Griswold v. Connecticut, supra*; the Fifth Amendment's privilege against self-incrimination, *see, e.g., Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1062, 16 L. Ed. 2d 694 (1966), and *Murphy v. Waterfront Com. of New York Harbor*, 378 U.S. 52, 84 S. Ct. 1594, 12 L. Ed. 2d 678 (1964); and the Ninth Amendment's reservation to the people of rights not expressly enumerated in the Constitution, *see, e.g., Griswold v. Connecticut, supra*, and *Mapp v. Ohio*, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961). This protection envisions two distinct privacy interests: the individual interest in avoiding disclosure of personal matters and the

interest in independence in making certain kinds of important decisions without governmental interference. *Whalen v. Roe*, 429 U.S. 589, 97 S. Ct. 869, 51 L. Ed. 2d 64 (1977).

The right to refuse medical treatment has deep roots in our common law. More than a century ago, this Court recognized that "no right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person. . . ." *Union Pacific Railway Co. v. Botsford*, 141 U.S. 250, 251, 11 S. Ct. 1000, 1001, 35 L. Ed. 734 (1891).

Even if the individual who is refusing treatment is a minor, the right to privacy, as well as other constitutional principles, apply equally and are equally vested in minors. The courts have recognized that minors, as well as adults, are protected by the Constitution. *See, e.g., Breed v. Jones*, 421 U.S. 519, 95 S. Ct. 1779, 44 L. Ed. 2d 346 (1975) (double jeopardy clause prohibits prosecuting a juvenile as an adult after an adjudicatory finding in juvenile court that he had violated a criminal statute); *Goss v. Lopez*, 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975) (children may not be deprived of certain property interests without due process); *Tinker v. Des Moines School District*, 393 U.S. 503, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969) (allowing high school students freedom of expression to protest the Vietnam war in school); *In re Gault*, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967) ("neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."); *In re Winship*, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970) (holding that a 12-year-old boy is entitled to the procedural safeguards contained in the Sixth Amendment). In fact, this Court, in *Bellotti v. Baird*, 443 U.S. 622, 99 S. Ct. 3035, 61 L. Ed. 2d 797 (1979) held that a Massachusetts statute requiring that a

minor obtain parental consent to an abortion unconstitutionally burdened the right of the pregnant minor to seek an abortion. The Court recognized three reasons that, in certain instances, the constitutional rights of children cannot be equated with those of adults: the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing. 443 U.S. at 634, 99 S. Ct. at 3043. "Indeed, affirmative sponsorship of particular ethical, religious or political beliefs is something we expect the State *not* to attempt in a society constitutionally committed to the ideal of individual liberty and freedom of choice." 443 U.S. at 638, 99 S. Ct. 3045. This Court then went on to say that, while it is preferable to encourage a family rather than a judicial decision about a minor's obtaining an abortion, the constitutional rights of the minor must be protected by not requiring parental notice or consent. Later, in *H.L. v. Matheson*, 450 U.S. 398, 101 S. Ct. 1164, 67 L. Ed. 2d 388 (1981), the Court held that a mere notice requirement to the parents of an unemancipated, dependent child does not violate that child's constitutional rights. It should be noted that the Court specifically found that there was no claim of maturity by this child *and* that there was no finding about any parental relationship. The Court reinforced its holding in *Bellotti v. Baird, supra*, that a state may not constitutionally legislate a blanket, unreviewable power to the parents to veto a minor's abortion. This Court also recognized, yet again, that "constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society. *Ginsberg v. New York*, 390 U.S. 629, 639, 88 S. Ct. 1274, 1280, 20 L. Ed. 195 (1968)." *H.L. v. Matheson*, 450 U.S. at 410, 101 S. Ct. at 1171.

Once a court finds that an individual has a constitutionally protected right to privacy to engage in a course of conduct, the government's regulation limiting this right may only be justified by a "compelling state interest." *Roe v. Wade*, 410 U.S. at 154, 93 S. Ct. at 727. But, the right to privacy is not an unqualified right, and at some point the government's interest may become sufficiently compelling to sustain a regulation of the activity. *See, e.g.*, *Jacobson v. Massachusetts*, 197 U.S. 11, 25 S. Ct. 358, 49 L. Ed. 643 (1905); and *Buck v. Bell*, 274 U.S. 200, 47 S. Ct. 584, 71 L. Ed. 1000 (1927). Unlike the Pennsylvania Supreme Court, which has adopted the approach that only a compelling state interest will override one's privacy rights, this Court has applied a flexible balancing approach with increasing levels of scrutiny corresponding to increasing levels of confidentiality intrusions. *See* discussion in *Commonwealth v. Nixon*, 761 A.2d 1151, 1156 (Pa. 2000).

Shannon Nixon, three days shy of her seventeenth birthday, possessed a constitutionally protected right of privacy. Before the government may encroach upon this right, a compelling state interest must be presented sufficient to supplant her rights and her wishes to those of the state. Her right to refuse medical treatment pursuant to her constitutional right to privacy and her right to practice her religion unfettered from state interference were absolute. The United States Constitution recognizes a privacy interest vested in both adults and minors. This interest includes the right to refuse medical treatment. Shannon Nixon had a privacy interest that, absent a compelling statement interest that supplants her own rights, could not be infringed. Recognizing this right to refuse medical treatment eliminates the duty imposed on the Petitioners to provide treatment.

II.

THE PROSECUTION AND CONVICTION OF THESE PETITIONERS VIOLATES THEIR AND THEIR DAUGHTER'S ABSOLUTE RIGHT TO FREE EXERCISE OF THEIR RELIGION UNFETTERED FROM INTERFERENCE BY THE STATE.

The decision of the Pennsylvania Supreme Court directly penalizes the Petitioners' and their daughter's exercise of their religious belief. How can any Court hold these Petitioners criminally liable for putting their faith in God in accordance with the beliefs of their established religion and for allowing a devout sixteen-year old woman to follow the beliefs to which she has always held fast. A central tenet of the Petitioners' and the victim's faith is that life rests ultimately in God's hands. Petitioners and their extended family have adhered to that belief. This faith is concerned, not only with the child's and family members' physical well-being, but also for the spiritual interest or eternal interest. This is amply demonstrated by the wishes of Shannon Nixon to be anointed and to pray when she became ill. The evidence is also clear that she knew the availability of medical treatment and chose to forego that treatment and to be true to her faith and to her strongly-held beliefs. To require that her parents infringe on her exercise of those strongly held beliefs or that they be required, by a duty of care as parents to an adult child, to supplant those beliefs by governmental requirements, unconstitutionally infringes on her right and the Petitioners' right to free exercise of their beliefs and their religion.

Petitioners' right to hold and to practice their religious beliefs free from governmental interference is guaranteed by the free exercise clause of the First Amendment to the

United States Constitution as applied to the states by the Fourteenth Amendment. Petitioners' right to raise their child by those beliefs follows from the guarantee of religious freedom and the state's traditional deference to the parents' authority over their child. Petitioners' and their daughter's exercise of these rights brought them in conflict with other established law, *i.e.*, the Commonwealth of Pennsylvania's position that their failure to force medical treatment on their daughter in derogation of her own expressed wishes and beliefs is a violation of the criminal statutes of Pennsylvania, *i.e.*, that Petitioners violated an established duty of care to their daughter and thus were responsible for her death. This, despite the recognition by the statutes of Pennsylvania that "child abuse" does not include cases where ". . . the county agency determines that a child has not been provided needed medical or surgical care because of seriously held religious beliefs of the child's parents, guardian or person responsible for the child's welfare, which beliefs are consistent with those of a bona fide religion . . ." 23 Pa. C.S.A. § 6303(b)(3). In those cases, the statute provides for: close monitoring of the child; court-ordered medical intervention when the lack of medical or surgical care threatens the child's life or long-term health; and other alternative methods of protection of the child, including general protective services, if appropriate. The statute specifically provides that the determination that the child has not been provided needed medical or surgical care because of seriously held religious beliefs of the child's parents shall not be referenced as child abuse. This specific exemption is in recognition of the two interests most recognized here: the parents *and the child's* right to free exercise of religion and the parent's claim to authority in their own household and in the rearing of their children.

The guarantee of freedom of religion is intended to secure the rights of the individual as against the state. Underlying the guarantee is a principle of neutrality, a belief that religion is "not within the cognizance of civil government." *Reynolds v. United States*, 8 Otto 145, 163, 98 U.S. 145, 163, 25 L. Ed. 244 (1878). As this Court recognized,

> To make accommodations between these freedoms and an exercise of state authority always is delicate. It hardly could be more so than in such a clash as this case presents. On one side is the obviously earnest claim for freedom of conscience and religious practice. With it is allied the parent's claim to authority in her own household and in the rearing of her children. The parent's conflict with the state over control of the child and his training is serious enough when only secular matters are concerned. It becomes the more so when an element of religious conviction enters. Against these sacred private interests, basic in a democracy, stand the interests of society to protect the welfare of children, and the state's assertion of authority to that end, made here in a manner conceded valid if only secular things were involved.

Prince v. Massachusetts, 321 U.S. 158, 165, 64 S. Ct. 438, 441, 88 L. Ed. 645 (1944).

Religious freedom is too sacred a right to be restricted or prohibited in any degree without convincing proof that a legitimate interest of the state is in grave danger and has not been addressed convincingly by the child and by the

legislature. In this case, the legislature has addressed the matter and has provided an acceptable exemption to any duty by the parents. Should not their constitutional rights also be protected, and more stringently, from any criminal culpability in exercising their religious beliefs.

The impact of the Commonwealth of Pennsylvania's prosecution is not only severe, but inescapable, for the Commonwealth's position affirmatively compels the Petitioners, pursuant to criminal sanction, to perform acts undeniably at odds with fundamental tents of their religious beliefs. Such a prosecution carries with it precisely the kind of objective danger to the free exercise of religion that the First Amendment was designed to prevent. *See Wisconsin v. Yoder*, 406 U.S. 205, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972). As Justice Douglas observed in his Dissent in *Wisconsin v. Yoder, supra*:

> These children are "persons" within the meaning of the Bill of Rights . . . .Where the child is mature enough to express potentially conflicting desires, it would be an invasion of the child's rights to permit such an imposition without canvassing his views. As in *Prince v. Massachusetts*, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed.2d 645 (1944), it is an imposition resulting from this very litigation.

406 U.S. at 242, 92 S. Ct. 1546.

In *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628 (1943), this Court held that school children, whose religious beliefs collided with a school rule requiring them to salute the flag, could not be required to do so. While the sanction included

expulsion of the students *and* prosecution of the parents, the vice of the requirement was its interference with child's free exercise of religion.

When examining the state's interest in preserving the lives of its citizens, an important distinction must be drawn between protecting the state's citizens from injuries by a third party and protecting citizens from themselves. While the state has a substantial interest in protecting its citizens from each other, its interest is relatively low when the acts (or omissions) of one individual do not injure others or impact the public at large. This is consistent with the primary function of the state to preserve and to promote liberty and the personal autonomy of the individual.

> Refusing medical intervention merely allows the disease to take its natural course; if death were eventually to occur, it would be result, primarily, of the underlying disease, and not the result of a self-inflicted injury. In addition, people who refuse life sustaining medical treatment may not harbor a specific intent to die, rather, they may fervently wish to live, but to do so free from unwanted medical technology . . . On balance, the right to self-determination ordinarily outweighs any countervailing state interest and competent persons generally are permitted to refuse medical treatment, even at the risk of death.

In the Matter of Conroy, 486 A.2d 1209, 1225-26 (N.J. 1985).

As the Pennsylvania Superior Court today noted in *In re Duran*, 2001 Pa. Super. 52 (decided February 21, 2001), "Spiritual and religious considerations, rather than an intent

to die, motivated her refusal of blood transfusions." (Slip op. at 14). The Superior Court went on to say: "It is a difficult thing to decline potentially life-saving treatment for a loved one, rendered mute by her condition, on the basis of her devotion to religious beliefs." (Slip op. at 18-19). In this case, despite Shannon Nixon's status as a minor, she clearly manifested her desire to continue to practice her religious beliefs as set forth by her faith.

CONCLUSION

For all the foregoing reasons, Petitioners respectfully pray that their petition for a writ of certiorari be granted.

Respectfully submitted,

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APPENDIX A — OPINION OF THE SUPREME COURT OF PENNSYLVANIA DATED AND DECIDED NOVEMBER 27, 2000

SUPREME COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,

Appellee,

v.

DENNIS E. NIXON,

Appellant.

COMMONWEALTH OF PENNSYLVANIA,

Appellee,

v.

LORIE A. NIXON,

Appellant.

Argued March 7, 2000.
Decided Nov. 27, 2000.

* * *

Before FLAHERTY, C.J., and ZAPPALA, CAPPY, CASTILLE, NIGRO, NEWMAN and SAYLOR, JJ.

Appendix A

OPINION

ZAPPALA, Justice.

We granted allocatur for this Court to consider two issues. First, we consider whether to adopt a "mature minor doctrine" which would be an affirmative defense to the parental duty to provide care to a minor. Secondly, we consider whether Shannon Nixon had a right to refuse medical care pursuant to her privacy rights under the constitutions of the United States and this Commonwealth. For the reasons that follow, we choose not to adopt a "mature minor doctrine" as a criminal defense and further, we find that Shannon Nixon's constitutional right to privacy did not relieve her parents from fulfilling their statutory obligations. Therefore, we affirm the order of the Superior Court, which, in turn, affirmed the order and judgment of sentence of the Court of Common Pleas of Blair County.

This case arose from the following facts. Dennis and Lorie Nixon, Appellants, were the parents of the victim, Shannon Nixon. Shannon Nixon was sixteen years old at the time of her death. In mid-June 1997, it became obvious to Appellants that Shannon was not feeling well. Appellants began to pray for their daughter's health. They also took her to their place of worship where Shannon was "anointed".[1] Shannon initially reported feeling somewhat better, but then her condition deteriorated. She became increasingly weak

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1. Appellants and their children were members of the Faith Tabernacle Church, a religion in which illnesses are addressed through spiritual treatment rather than by medicine.

and fell into a coma. After a few hours in a comatose state, Shannon Nixon died. An autopsy determined that Shannon died from diabetes acidosis, which was a treatable, though not curable, condition.

Appellants were convicted of involuntary manslaughter, 18 Pa.C.S. § 2504, and also of endangering the welfare of a child under 18 Pa.C.S. § 4304. These statutes respectively state:

> Involuntary manslaughter
>
> (a) General rule. — A person is guilty of involuntary manslaughter when as a direct result of the doing of an unlawful act in a reckless or grossly negligent manner, or the doing of a lawful act in a reckless or grossly negligent manner, he causes the death of another person.
>
> Endangering welfare of children
>
> (a) Offense defined. — A parent, guardian, or other person supervising the welfare of a child under 18 years of age commits an offense if he knowingly endangers the welfare of the child by violating a duty of care, protection or support.

Appellants' first argument is that we should adopt a "mature minor doctrine" and allow Appellants to assert such doctrine as an affirmative defense to the endangering welfare of children charge. If the affirmative duty created by 18 Pa.C.S. § 4304 was removed from Appellants, then it

follows that the involuntary manslaughter conviction would also fall. This is because the Commonwealth used § 4304 to show an unlawful act, one of the alternative prerequisites to § 2504.

By placing an affirmative duty upon parents and guardians, the legislature has acted to partially fulfill the Commonwealth's duty to care for those individuals who for one reason or another are legally incapacitated. This duty to care for those who are legally incapacitated arose under the sovereign's duty of parens patriae, and following independence was assumed by the individual states. See Commonwealth v. Baldwin, 54 Watts 1 (Pa.1832). By mandating primary responsibility for the child's wellbeing upon the parents, the legislature has not only acted toward fulfilling its role as parens patriae, but also has recognized that parents have a duty to provide for their children which accompanies the right to raise children with minimal state encroachment. As the United States Supreme Court stated:

> It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. And it is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter. But the family itself is not beyond regulation in the public interest, as against a claim or religious liberty. And neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth's well being,

> the state as parens patriae may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor, and in many other ways. Its authority is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience. Thus, he cannot claim freedom from compulsory vaccination for the child more than for himself on religious grounds. The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter ill health or death.

Prince v. Commonwealth of Massachusetts, 321 U.S. 158, 166-67, 64 S.Ct. 438, 88 L.Ed. 645 (1944) (citations and footnotes omitted).

The Appellants argue that their daughter was mature enough to make her own decisions regarding health care and religion, and therefore ask us to create an exception to their obligation on the basis of their daughter's maturity. In defining the mature minor doctrine, Appellants refer us to a decision from our sister state of Tennessee which stated:

> Whether a minor has the capacity to consent to medical treatment depends upon age, ability, experience, education, training and degree of maturity or judgment obtained by the minor or, as well as upon the conduct and demeanor of the minor at the time of the incident involved. Moreover, the totality of the circumstances, the nature of the treatment and its risks and probable

> consequences, and the minor's ability to appreciate the risk and consequences are to be considered.

Cardwell v. Bechtol, 724 S.W.2d 739, 748 (Tenn.1987). See also Belcher v. Charleston Area Medical Center, 188 W.Va. 105, 422 S.E.2d 827 (1992), and In re E.G., 133 Ill.2d 98, 139 Ill.Dec. 810, 549 N.E.2d 322 (1989).

This doctrine is not the legal equivalent of emancipation, for an emancipated minor assumes all legal responsibility for his or herself. Thus, in the situation of an emancipated minor, the legal duty to provide care is no longer applicable. There is no indication in argument or record that Shannon Nixon was emancipated. Rather, she lived in Appellants' home and did not assert her independence from Appellants in a manner which would lead to a finding of emancipation. See Nicholason v. Follweiler, 735 A.2d 1275, 1278 (Pa.Super.1999); Ross v. Commonwealth of Pennsylvania, Department of Public Welfare, 60 Pa.Cmwlth. 403, 431 A.2d 1135, 1138 (1981); and Detwiler v. Detwiler, 162 Pa.Super. 383, 57 A.2d 426 (Pa.Super.1948).

We believe that, without passing comment upon the wisdom of the mature minor doctrine itself, a terse review of the facts and circumstances which confronted the courts of our sister states readily reveals why the doctrine is not applicable to Appellants' case.

In Cardwell v. Bechtol, the Supreme Court of Tennessee addressed the issue in the context of a civil medical malpractice suit, under that state's common law of torts. The

defendant, a licensed osteopath, performed spinal manipulations on a 17-year-old woman, without the consent of her parents. After complications arose, her parents brought suit against the osteopath for a variety of complaints related to the failure to obtain proper informed consent. As a defense, the osteopath asserted that the young woman was competent to, and actually did give informed consent for the procedure that he performed. The Tennessee court agreed with the defendant, and adopted the mature minor exception, as defined above.

In Belcher v. Charleston Area Medical Center, the Supreme Court of Appeals of West Virginia also adopted a version of the mature minor doctrine. That court addressed the doctrine in the context of a wrongful death suit, where the plaintiffs asserted that their son, a 17-year-old man with muscular dystrophy, should have been consulted prior to his doctor's withholding medical treatment from him due to a "Do Not Resuscitate" order which had been requested by his parents. When the young man had a respiratory arrest and cardiac failure, the hospital staff attempted to revive him only with the minimal procedures allowed by a "Do Not Resuscitate" order. That court held that

> except in very extreme cases, a physician has no legal right to perform a procedure upon, or withhold treatment from a patient without the patient's consent, nor upon a child without the consent of the child's parents or guardian, unless the child is a mature minor, in which case the child's consent would be required. Whether the child has the capacity to consent depends upon

> the age, ability, experience, education, training, and degree of maturity or judgment obtained by the child, as well as upon the conduct and demeanor of the child at the time of the procedure or treatment. The factual determination would also involve whether the minor has the capacity to appreciate the nature, risks, and consequences of the medical procedure to be performed, or the treatment to be administered or withheld.

Belcher, 422 S.E.2d at 838.

Finally, Appellants bring the case of In re E.G., a Minor, 133 Ill.2d 98, 139 Ill.Dec. 810, 549 N.E.2d 322 (1989), to our attention. The Supreme Court of Illinois held there that

> [t]he common law right to control one's health care was also the basis for the right of an incompetent patient to refuse life-sustaining treatment through a surrogate. . . . We see no reason why this right of dominion over one's own person should not extend to mature minors.

139 Ill.Dec. 810, 549 N.E.2d at 326. The rationale of the Illinois court demonstrates the limitations of the doctrine. As the Illinois court stated,

> [t]he trial judge must determine whether a minor is mature enough to make health care choices on her own. An exception to this, of course, is if the legislature has provided otherwise, as in the

Appendix A

Consent by Minor to Medical Operations Act. We feel the intervention of a judge is appropriate for two reasons.

First, Illinois public policy values the sanctity of life. When a minor's health and life are at stake, this policy becomes a critical consideration. A minor may have a long and fruitful life ahead that an immature, foolish decision could jeopardize. Consequently, when the trial judge weighs the evidence in making a determination of whether a minor is mature enough to handle a health care decision, he must find proof of this maturity by clear and convincing evidence.

Second, the State has a parens patriae power to protect those incompetent to protect themselves. "[I]t is well-settled that the State as parens patriae has a special duty to protect minors and, if necessary, make vital decisions as to whether the condition is life threatening, as wrenching and distasteful as such actions may be." The State's parens patiae power pertaining to minors is strongest when the minor is immature and thus incompetent (lacking capacity) to make these decisions on her own. The parens patriae authority fades, however, as the minor gets older and disappears upon her reaching adulthood. The State interest in protecting a mature minor in these situations will vary depending upon the nature of the medical treatment involved. Where the health

> care issues are potentially life threatening, the State's parens patriae interest is greater than if the health care matter is less consequential.

139 Ill.Dec. 810, 549 N.E.2d at 327 (citations omitted).

We find the current case to have a crucial distinction from the cases relied upon by Appellants.[2, 3] The legislature of this Commonwealth has provided a statute which identifies those minors who are deemed sufficiently mature to give consent to medical treatment.

> Any minor who is eighteen years of age or older, or has graduated from high school, or has married, or has been pregnant, may give effective consent to medical, dental and health services for himself or herself, and the consent of no other person shall be necessary.

Act of Feb. 13, 1970, P.L. 19, No. 10, § 1, 35 P.S. § 10101. Our legislature, as Appellants assert, has created several other situations where a minor may give lawful consent for medical

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2. Because we find that an affirmative duty was statutorily placed upon Appellants, we need only note that this Court has indicated that, "[t]he inherent dependency of a child upon his parent to obtain medical aid, i.e., the incapacity of a child to evaluate his condition and summon aid himself, supports imposition of such a duty upon the parent." Commonwealth v. Konz, 498 Pa. 639, 450 A.2d 638, 641 (1982) (emphasis added).

3. Appellants fail to cite, and our own research fails to reveal any cases from our sister states which hold that the doctrine espoused by Appellants is viable as a defense in a criminal case.

treatment. See Act of April 14, 1972, P.L. 221, No. 63 § 12, 71 P.S. § 1690.112 (minors may consent to diagnosis or treatment when suffering from the use of controlled or harmful substances); Act of April 23, 1956 P.L. (1955) 1510 § 14, 35 P.S. § 521.14 (allows minors to consent to the treatment of venereal disease); and Act of Dec. 9, 1969 P.L. 333, § 1 as amended, 35 P.S. § 10001 (allows minors over 17 years old to voluntarily donate blood without parental consent) but cf. 18 Pa.C.S. § 3206(c) (requires a minor to petition court for consent to an abortion when the parents do not consent; before giving such consent, the court must ascertain that the minor is mature and capable of giving informed consent).

We agree that these statutes create specific exceptions to the general rule of incapacity. The statutes do not, contrary to Appellants' assertion, show a legislative intent that any minor, upon the slightest showing, has capacity either to consent to or to refuse medical treatment in a life and death situation. We therefore hold that the maturity of an unemancipated minor is not an affirmative defense applicable to the charges brought against Appellants.[4]

Appellants' second argument is that the parental duty to provide medical care was negated by Shannon Nixon's privacy interests under the constitutions of the United States

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4. We note that our Superior Court has held, that "even if [the minor victims] were considered mature enough to freely exercise their religious beliefs, it does not dispel [the parents'] duty while the children are in their care, custody, and control to provide them with parental care, direction and sustenance." Commonwealth v. Cottam, 420 Pa.Super. 311, 616 A.2d 988 (1992).

and Pennsylvania.[5] This Court has acknowledged that both constitutions do offer protections of personal privacy, which results from the "penumbra" of articulated rights. See In re "B", 482 Pa. 471, 394 A.2d 419 (1978). The Pennsylvania Constitution encompasses "the right to be let alone." Stenger v. Lehigh Valley Hospital Center, 530 Pa. 426, 609 A.2d 796 (1992). The difference between the two constitutions is in the tests involved in determining if a violation of privacy has occurred. In order to determine if a violation of the United States Constitution has occurred, a flexible balancing approach is employed with increasing levels of scrutiny corresponding to increasing levels of confidentiality intrusions. See id. at 801. On the other hand, under Pennsylvania's constitution, while the right to privacy is not absolute, we do not apply a flexible approach. In this Commonwealth, only a compelling state interest will override one's privacy rights. Id. at 802, citing Fabio v. Civil Service Commission of the City of Philadelphia, 489 Pa. 309, 414 A.2d 82 (1980).

A compelling interest in the welfare of minors may impinge upon the constitutional rights of both minors and adults simultaneously. In Commonwealth v. Wormser, 260 Pa. 44, 103 A. 500 (1918), this Court examined whether a criminal prosecution could stand for the crime of employing a minor at night and without a certificate. As a defense, the

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5. Neither the Commonwealth nor Appellants have addressed whether parents of a deceased minor have standing to assert the minor's constitutional rights as a bar to prosecution of their own criminal behavior. In the present circumstances, we decline to address this question sua sponte.

appellant argued that such a criminal prosecution infringed upon his, and the minor's, constitutional right to contract. We stated,

> [t]he statute in question was enacted under the general police power of the Commonwealth. Its object is declared to be "to provide for the health, safety, and welfare of minors," and it is too clear for discussion that this is an appropriate subject for legislative action not only in the exercise by the Commonwealth of its authority as parens patriae but also of the inalienable power to enact such laws as promote the health, morals and general welfare of the people.

260 Pa. at 46, 103 A. at 501.

As we find that the state's interest as parens patriae in the very life of an unemancipated minor is a compelling interest, and the imposition of a parental duty to provide care for a minor in their custody is an appropriate subject for legislative action, we need not to examine this constitutional question further. Additionally, as we find that Pennsylvania's Constitution is more protective of privacy than the United States Constitution, an analysis of that jurisprudence is unnecessary.

In summary, we hold that the mature minor doctrine suggested by Appellants is not an applicable defense in this case. We also hold that Appellants' convictions are not an unconstitutional violation of the victim's right to privacy. We therefore affirm the order of the Superior Court.[6]

Justice CAPPY files a concurring opinion.

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6. We note that Superior Court addressed various constitutional arguments regarding convictions under 18 Pa.C.S. § 2504 and § 4304 in Commonwealth v. Barnhart, 345 Pa.Super. 10, 497 A.2d 616 (1985) and Commonwealth v. Cottam, 420 Pa.Super. 311, 616 A.2d 988 (1992). We have not addressed many of the issues presented in those cases and will not do so here, as the parties do not raise them.

Appendix A

CAPPY, Justice, concurring.

From my review of the record, it is evident that Shannon Nixon did not have the maturity to make an informed decision regarding medical treatment. Thus, I concur in the majority's result, which affirms the order of the Superior Court, upholding the trial court's judgment of sentence. I write separately, however, because I do not agree with the majority's characterization of the question that appellants raised for our consideration or with the majority's view of the role that legislative intent should play in this case or with the majority's ultimate decision to reject the mature minor doctrine.[1]

The question raised in this appeal — did Shannon Nixon, even though a minor, have the right to refuse medical attention — is of weighty import, and involves a matter which

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1. I found the majority opinion ambiguous. When I read the majority's statement on page 5 of its opinion that "[w]e believe that, without passing comment on the wisdom of the mature minor doctrine itself, a terse review of the facts and circumstances which confronted the courts of our sister states readily reveals why the doctrine is not applicable to Appellants' case", I was given to believe that the majority had decided not to determine, one way or the other, whether the doctrine would be adopted in Pennsylvania. If this had been the case, then the better course of action would have been the dismissal of this appeal as improvidently granted, rather than the issuance of an opinion containing dicta. It was after some deliberation of the majority's discussion of the statutory exceptions to the general rule of minor incapacity on pages 7 and 8 of its opinion, that I concluded that the majority has evaluated the doctrine and determined that it will not be part of our common law under any circumstances.

has "deep roots in our common law." In re Fiori, 543 Pa. 592, 673 A.2d 905, 909 (1996). In Pennsylvania, the control of one's own person and the right of self-determination are closely guarded through the principle of informed consent, which declares that absent an emergency, medical treatment may not be imposed without a person's permission. Id. The right to refuse treatment or to withdraw treatment once it has begun is a logical corollary to that principle. Id.

Under the common law, a minor is deemed incompetent to provide informed consent. Parents United for Better Schs., Inc. v. School Dist. of Phila. Bd. of Educ., 166 Pa.Cmwlth. 462, 646 A.2d 689, 691 (1994). Until the age of majority, a minor's parents make medical treatment decisions on his or her behalf. Id. The Pennsylvania legislature, however, has rendered the authority of parents to speak for their minor child with respect to health care less than absolute in certain circumstances, by enacting several statutes that allow minors to speak for themselves. Under 35 P.S. § 10101, a minor who is eighteen or older or graduated from high school or who has married or has been pregnant, may consent to health care treatment; under 35 P.S. § 10001, a minor who is seventeen years of age or older may donate blood in any voluntary, non-compensatory program without parental permission; under 35 P.S. § 10103 and 35 P.S. § 521.14(a), a minor who may be pregnant or infected with a venereal disease may seek and receive treatment; under 71 P.S. § 1690.112, a minor who suffers from use of a controlled or harmful substance may consent to the furnishing of medical care or counseling; and finally, under 18 Pa.C.S. § 3206(c), a minor who proves in the court of common pleas that she is mature and capable of giving informed consent may consent to and obtain an abortion.

Appendix A

These statutes are at the heart of the majority's holding. The majority states:

> [These] statutes create specific exceptions to the general rule of incapacity. The statutes do not, contrary to Appellants' assertion, show a legislative intent that any minor, upon the slightest showing, has capacity either to consent to or to refuse medical treatment in a life and death situation. We therefore hold that the maturity of an unemancipated minor is not an affirmative defense applicable to the charges brought against Appellants.

Majority opinion at 1155.

While the majority and I agree that these statutes provide "specific exceptions" to the general precept that minors are legally incapable of informed consent, the majority and I part company in several respects.

First, I believe that the majority's characterization of appellants' position is inaccurate. In my view, appellants did not assert that a minor upon the "slightest showing" of capacity should be permitted to consent to or to refuse health care treatment or premise application of the mature minor doctrine on a "life and death situation." Instead, appellants argued that "a minor of demonstrated maturity" or "[a] minor who is able to demonstrate the requisite maturity" "should have the ability to make determinations as to medical care." (Brief for Appellants, pp. 11-12.).

Second, I do not believe that legislative intent should have the decisive role in the case sub judice that the majority apparently gives it. The majority's holding against recognition of the mature minor doctrine is expressly and exclusively premised on the intent with which the legislature enacted its statutory exceptions to the general rule of parental consent. While it is certainly proper and advisable for this court to take note of relevant statutory authority in assessing the wisdom of the doctrine, and to strive for a judicial pronouncement that is consistent with that authority, see Pugh v. Holmes, 486 Pa. 272, 405 A.2d 897, 904, 905 (1979), it is not appropriate to give it a dispositive role. Except where the legislature has established a comprehensive statutory scheme, aimed at occupying an entire area, this court is guided, not directed, by legislative action. Id.

Lastly, I, unlike the majority, would recognize the mature minor doctrine. Indeed, the same statutes that inform the majority's rejection of the doctrine lead me to the opposite result. I agree with the legislature's willingness to make appropriate exceptions to the rule of minor incapacity in the first place and with the policies reflected in the exceptions the legislature has seen fit to enact. By their terms, the exceptions fall into two broad categories: those that are premised on a specific medical condition that ought to be treated and those that focus on a minor's status. With regard to the latter, the legislature has decided, for example, that turning eighteen, marrying, becoming a parent or graduating from high school are indicative of one's readiness to make health care decisions on one's own. 35 P.S. § 10101.

In the same way, I believe that when it is demonstrated that a minor has the capacity to understand the nature of his or her condition, appreciate the consequences of the choices he or she makes, and reach a decision regarding medical intervention in a responsible fashion, he or she should have the right to consent to or refuse treatment. I would, therefore, adopt the mature minor doctrine.

The record falls far short of establishing that Shannon Nixon met this standard. Accordingly, I concur in the majority's result.[2]

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2. Because I conclude that the mature minor doctrine does not apply in this case as a matter of fact, I decline to address appellants' contention that the doctrine provides them with an "affirmative defense" to the charges the Commonwealth brought against them. Because I would find that under the common law, a mature minor may consent to or refuse medical treatment, I would not reach, and I express no opinion on, the privacy issue appellants raise under the United States and Pennsylvania Constitutions. P.J.S. v. Pennsylvania State Ethics Comm'n, 555 Pa. 149, 723 A.2d 174, 176 (1999).

APPENDIX B — OPINION OF THE SUPERIOR COURT OF PENNSYLVANIA DATED AND FILED SEPTEMBER 21, 1998

SUPERIOR COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,

Appellee,

v.

DENNIS E. NIXON,

Appellant.

COMMONWEALTH OF PENNSYLVANIA,

Appellee,

v.

LORIE A. NIXON,

Appellant.

Argued April 14, 1998.
Filed Sept. 21, 1998.

* * *

Before DEL SOLE, TAMILIA and EAKIN, JJ.

Appendix B

DEL SOLE, Judge:

Appellants, Dennis and Lorie Nixon, were convicted of involuntary manslaughter and endangering the welfare of a child. They were sentenced to two and one-half to five years incarceration and a fine of $1,000. This direct appeal followed. We affirm.

On appeal, Appellants raise five issues. The first three issues concern Appellants' trial counsel's ineffectiveness for failing to raise: (1) Shannon Nixon's refusal of medical treatment pursuant to her right of privacy guaranteed by the U.S. and Pennsylvania constitutions; (2) Shannon Nixon's ability to refuse medical treatment as a mature minor; and (3) a violation of the notice requirement of due process where spiritual treatment was authorized by statute. Appellants additionally argue the trial court erred in failing to deliver a mistake of fact charge to the jury. Finally, Appellants argue the trial court improperly imposed an excessive sentence.

Appellants were the parents of Shannon Nixon ("Shannon"). The Nixon family are members of the Faith Tabernacle Church, a religion in which illnesses are addressed through spiritual treatment rather than by medicine. Thus, when Shannon began to feel ill in June of 1997, Appellants took her to be "anointed" at the church and prayed for her recovery. Shannon initially felt better and told her parents she had received her "victory", a recovery in answer to prayer. However, soon Shannon was ill again. As Shannon became increasingly weak and fell into a coma, Appellants continued to pray for her recovery. Shannon died hours after she fell into a coma. During the autopsy, it was determined that Shannon died of complications related to the onset of diabetes acidosis.

Appendix B

Because of the way Appellants have framed their first three issues, we choose to address the ineffective assistance of counsel claims, as well as the merits of the claims underlying the ineffectiveness claims. Appellants have complained, and we agree, that the trial court's rulings on these issues were not precise. No opinion has been filed to provide additional guidance on the rulings. Therefore, we can not determine clearly whether the trial court found these issues to be waived or whether the trial court addressed them on their merits. Because Appellants have raised these issues in the guise of ineffectiveness and alternatively on their merits, we choose to address both arguments.

Ineffective Assistance of Counsel

Trial counsel is presumed to be effective and an appellant has the burden of proving otherwise. Commonwealth v. Williams, 524 Pa. 218, 229, 570 A.2d 75, 81 (1990). Appellants present three issues they claim trial counsel was ineffective for failing to raise. A careful review of the record, however, shows that these issues were adequately raised and argued by Appellant's trial counsel before and during the trial and were rejected by the trial court. Accordingly, there was no waiver of issues and counsel was not ineffective for failing to raise these claims.

Right to Privacy/Mature Minor

As described above, Appellants claim that Shannon had a right to refuse medical treatment pursuant to her constitutional right to privacy which would eliminate Appellants' duty to provide treatment. Appellants argue that

a court evaluating a privacy interest should look at whether there exists a compelling state interest upon which to base encroachment into the right of privacy. Further, Appellants argue, because Shannon exercised her right to privacy, "her incapacity as a minor to seek medical treatment fades" and thus, "the [Appellants'] parental duty is discharged." Appellants' Brief at 21. Appellants additionally assert Shannon's ability to refuse medical treatment as a mature minor abrogated Appellants' duty of care. Because both of these arguments necessitate an abrogation of Appellants' parental duty of care, we will address them together.

Although Shannon, as a mature minor, had a right to refuse medical treatment pursuant to her constitutional right to privacy, this right does not discharge her parents' duty to override her decision when her life is in immediate danger. Our Supreme Court, in Green Appeal, 448 Pa. 338, 292 A.2d 387 (1972), permitted a sixteen-year-old boy to refuse to undergo an operation based upon religious beliefs. However, the permission to refuse medical treatment extended to minors in Green was strictly limited to situations in which the minor's life was not threatened. Thus, Green did not provide Shannon with the legal means to refuse medical treatment at a time when her life was in danger.

In a case more directly on point, a panel of this court specifically refused to extend a minor's right to exercise religious beliefs in such a manner that the parents' duties to the minor were abrogated. Commonwealth v. Cottam, 420 Pa.Super. 311, 616 A.2d 988 (1992). In Cottam, the defendants failed to provide food to their fourteen-year-old son and twelve-year-old daughter for a six-week period. The

defendants argued that their children were mature enough to voluntarily exercise their religious beliefs by refraining from eating and consequently, the defendants had no duty to provide food for the children. The court did not agree, holding instead that:

> . . . even if [the children] were considered mature enough to freely exercise their religious beliefs, this does not dispel [defendants'] duty while the children are in their care, custody and control to provide them with parental care, direction and sustenance.

Cottam at 335-37, 616 A.2d at 1000.

In Commonwealth v. Barnhart, 345 Pa.Super. 10, 497 A.2d 616 (1985), another set of parents from Appellants' church were convicted of involuntary manslaughter and endangering the welfare of a child after relying solely on spiritual healing to treat their two-year-old son's cancer. This court held that every parent in the Commonwealth of Pennsylvania had a duty of care to their child, at the very least, "to avert the child's untimely death." Barnhart, at 621. The court elaborated on the nature of the parents' duty:

> A parent has the legal duty to protect her child, and the discharge of this duty requires affirmative performance. The inherent dependency of a child upon his parent to obtain medical aid, i.e., the incapacity of a child to evaluate his condition and summon aid by himself, supports imposition of such a duty upon the parent.

Id. (citations omitted).

Appendix B

Appellants had a duty to their minor child Shannon to override her own religious beliefs and obtain medical treatment for her when her condition became life-threatening. Neither Shannon's right of privacy, nor her status as a mature minor abrogated that duty. Thus, Appellants' arguments fail on their merits.

Notice

Appellants argue that their prosecution violated notice requirements of due process where spiritual treatment was authorized by statute. Appellants' argument refers to a possible conflict between criminal statutes and child abuse statutes. The Child Protective Services Act ("The CPSA") provides:

> If, upon investigation, the county agency determines that a child has not been provided needed medical or surgical care because of seriously held religious beliefs of the child's parents, guardian or person responsible for the child's welfare, which beliefs are consistent with those of a bona fide religion, the child shall not be deemed to be physically or mentally abused. The county agency shall closely monitor the child and shall seek court-ordered medical intervention when the lack of medical or surgical care threatens the child's life or long-term health. In cases involving religious circumstances, all correspondence with a subject of the report and the records of the Department of Public Welfare and the county agency shall not reference "child

> abuse" and shall acknowledge the religious basis for the child's condition, and the family shall be referred for general protective services, if appropriate.

23 Pa.C.S.A. § 6303(b)(3).

The involuntary manslaughter statute provides:

> A person is guilty of involuntary manslaughter when as a direct result of doing an unlawfulact in a reckless or grossly negligent manner or the doing of a lawful act in a reckless or grossly negligent manner, he causes the death of another person.

18 Pa.C.S.A. § 2504.

Appellants argue that because the CPSA exempts parents who utilize spiritual treatment for their children from characterization as child abusers, they did not have sufficient notice that their spiritual treatment of Shannon could be criminal under the involuntary manslaughter statute. We disagree.

We find that the CPSA and the involuntary manslaughter statutes are not in conflict in their plain meaning, as well as under a constitutional analysis. A plain reading of the statutes shows that an act which does not qualify as child abuse may still be done in a manner which causes death and thus qualifies as involuntary manslaughter. This precise situation occurred in this case. While the Nixons were not considered

child abusers for treating their children through spiritual healing, when their otherwise lawful course of conduct led to a child's death, they were guilty of involuntary manslaughter.

Appellants point to statutes in Minnesota and Florida which were found to violate due process requirements upon review by courts considering appeals of convictions similar to Appellants'. These statutes, however, differ significantly from the CPSA. The Minnesota statute in question in State v. McKown, 475 N.W.2d 63 (Minn.1991), cert. denied, 502 U.S. 1036, 112 S.Ct. 882, 116 L.Ed.2d 786 (1992), provided that "spiritual means or prayer . . . shall constitute 'health care.' " Id. at 65, n. 3. Similarly, a Florida statute at issue in Hermanson v. State, 604 So.2d 775 (Fla.1992), provided that while spiritual treatment will not be characterized as child abuse, a court may still order:

> . . . when the health of the child requires it, the provision of medical services by a physician, . . . , or treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization.

Id. at 776 (emphasis added).

Thus, the Florida statute raised spiritual intervention to a level equal to that of medical treatment. The Minnesota and Florida legislatures specifically defined spiritual healing as accepted treatment for illness in children, raising it to the same level as conventional medical treatment.

Appendix B

The CPSA specifically does not equate spiritual treatment with medical care; rather, it merely exempts parents who treat their children in this manner from characterization as child abusers. Further, the CPSA does not negate the duty imposed on parents to procure medical care for their children; in fact, the CPSA provides a protocol through which the state can step in and enforce that duty "when the lack of medical or surgical care threatens the child's life or long-term health." It is clear that if the Pennsylvania legislature wanted to authorize spiritual treatment as health care, it could have adopted a statute similar to the one in Minnesota. However, the purpose of the CPSA is to ensure that children in life-threatening danger receive proper medical attention. Thus, the statutes upon which our sister courts found unconstitutional are distinguishable from the CPSA.

Jury Charge

At trial, Appellants requested the court instruct the jury that Appellants were acting under a mistake of fact. Their mistake of fact, Appellants allege, was that they believed "their daughter would not die and the Lord would intervene." Appellants' Brief at 35. The trial court, however, found the facts did not warrant a mistake of fact charge, and based its holding on Appellants' testimony about God as the giver and taker of life. The trial court concluded ". . . there was no mistake of fact by them seeking divine intervention." R.R. at 428a.[1]

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1. In reviewing trial matters, we have relied on the Reproduced Record because an original trial transcript was never filed with this court. We note that Appellee has not objected to the Reproduced Record.

Appendix B

We shall not reverse a trial court's refusal to give a requested jury charge unless the court's refusal was prejudicial to the defendants. Commonwealth v. Cottam, 420 Pa.Super. 311, 333-35, 616 A.2d 988, 999 (1988). If the proposed jury charge is inapplicable and improper, the court should not give it to the jury. Id.

The trial court found that Appellants' testimony did not provide a proper basis for a mistake of fact charge. We will not disturb the trial court's finding, especially as we look at the testimony of Appellant Lorie Nixon: "I feel that God is the giver and taker of life." R.R. at 388a. While Appellants had hope and faith that divine intervention could cure Shannon, they also knew it might not.

Sentencing

Appellants argue the trial court abused its discretion in imposing a sentence above the aggravated range outlined in the sentencing guidelines. Further, Appellants assert, the trial court failed to consider Appellants' rehabilitative capacity. We disagree.

Because these issues challenge the discretionary aspects of sentencing, we must first decide whether to accept Appellants' appeal. 42 Pa.C.S.A. § 9781. Appellants' brief contains the requisite statement of reasons relied upon in support of appeal as required by Pa.R.A.P. 2119(f) and Commonwealth v. Tuladziecki, 513 Pa. 508, 522 A.2d 17 (1987). Therefore, we must determine if Appellants have raised a substantial question that the sentence imposed is not appropriate under the Sentencing Code. Commonwealth v. Felix, 372 Pa.Super. 145, 539 A.2d 371 (1988).

Appendix B

The trial court sentenced Appellants above the aggravated range outlined in the Sentencing Guidelines; thus, a substantial question is raised only when the sentence is unreasonable. Id. at 150-52, 539 A.2d at 374. We note that ordinarily, allegations that a sentencing court "failed to consider" or "did not adequately consider" various factors is really a request for this court to put its judgment in place of the trial court's and do not raise a substantial question. Commonwealth v. Montalvo, 434 Pa.Super. 14, 641 A.2d 1176 (1994). Further, a claim of excessiveness when the sentence is within the statutory limits is not a substantial question. Commonwealth v. Dungan, 372 Pa.Super. 323, 539 A.2d 817 (1988). However, because of the unusual nature of this case, we will briefly address the merits of Appellants' argument.

The standard of review in sentencing matters is well settled. Sentencing is left to the discretion of the sentencing court and will not be disturbed absent a manifest abuse of discretion. Commonwealth v. Plank, 498 Pa. 144, 145, 445 A.2d 491, 492 (1982).

Appellants argue the trial court improperly considered their prior record in deciding their sentence. Appellants' prior records stem from the death of their child, Clayton, in 1991. Clayton was nine years old and died from complications arising from an ear infection. Because Appellants did not take Clayton for medical treatment, they were prosecuted and pled no contest to involuntary manslaughter and endangering the welfare of a child. In that instance, Appellants received two years of probation.

Appendix B

The trial court based its departure from the sentencing guidelines on the repetitive nature of Appellants' crime. The trial court adequately explained its rationale and justification for the sentence in its June 10, 1997 order. The court gave great emphasis to the lack of opportunity for rehabilitation of Appellants and possibility of a recurrence of these criminal events. We will not disturb the trial court's well-justified sentence.

Appellants make several other arguments in which they assert the trial court did not properly give weight to certain testimony and sentencing factors. However, Appellants do not dispute the fact that the trial court was aware of and even addressed these factors. As stated above, we will not disturb a trial court's sentence on this basis absent an abuse of discretion.

Judgment of sentence affirmed.

APPENDIX C — PA. R.A.P. RULE 1925 ORDER OF THE COURT OF COMMON PLEAS, BLAIR COUNTY, PENNSYLVANIA DATED AND FILED JULY 16, 1997

THE COURT OF COMMON PLEAS
BLAIR COUNTY, PENNSYLVANIA

96 CR 1260

COMMONWEALTH OF PENNSYLVANIA

v.

DENNIS NIXON

NORMAN D. CALLAN JUDGE

Pa. R.A.P. RULE 1925 ORDER,

AND NOW, this 16th day of July, 1997, in conformance with Pa. R.A.P. Rule 1925, the reasons for the rulings on the pre-trial motions are set forth in the Orders dated February 11, 1997. Individual voir dire was conducted on the day of Jury Selection March 31, 1997, and completed on April 1, 1997. The reasons for the rulings on the objections made during trial are set forth in the trial transcript. The reasons for the sentence imposed are set forth in the sentencing transcript and the Order dated June 10, 1997.

BY THE COURT:

s/ Norman D. Callan
J.

APPENDIX D — ORDERS OF THE COURT OF COMMON PLEAS OF BLAIR COUNTY, PENNSYLVANIA DATED FEBRUARY 11, 1997 AND FILED FEBRUARY 14, 1997

IN THE COURT OF COMMON PLEAS OF
BLAIR COUNTY, PENNSYLVANIA

96 CR 1260

COMMONWEALTH OF PENNSYLVANIA

– vs –

DENNIS EUGENE NIXON, SR.

---

96 CR 1261

COMMONWEALTH OF PENNSYLVANIA

– vs –

LORIE ANN NIXON

PRESIDING JUDGE: — THE HONORABLE NORMAN D. CALLAN

* * *

ORDER

AND NOW, this 11th day of February, 1997, the above-captioned matter having come before this court pursuant to pre-trial omnibus motions, on this one in particular founded on the free exercise clause of the Constitution of the United

States, as well as that of the state, Article 1, Section 3, the court is familiar with the cases referred to, not only Barnhart, but other constitutional issues dealing with freedom of religion and the free enterprise clause provides substantial protection for lawful conduct granted in religious belief. It does not, however, stand for the proposition of allowing unlawful conduct. The court is satisfied that the state has a compelling state interest in the public health, safety, morals and general welfare. There can't be any more least restriction than the prosecution after the event.

For those reasons, the objection and the Motion to Dismiss based on the free exercise clause is denied and dismissed.

BY THE COURT:

s/ Norman D. Callan
J.

Appendix D

IN THE COURT OF COMMON PLEAS OF
BLAIR COUNTY, PENNSYLVANIA

96 CR 1260

COMMONWEALTH OF PENNSYLVANIA

– vs –

DENNIS EUGENE NIXON, SR.

---

96 CR 1261

COMMONWEALTH OF PENNSYLVANIA

– vs –

LORIE ANN NIXON

PRESIDING JUDGE: — THE HONORABLE NORMAN D. CALLAN

* * *

ORDER

AND NOW, this 11th day of February, 1997, the above-captioned motion to dismiss based upon the age of the alleged victim, being three days shy of 17 years of age, and therefore, not subject to the caveats of *Barnhart* and *Cottam*, the court having reviewed both of those cases, the court is satisfied to follow the language of *Cottam* at 616 A.2d at Page 1000,

Appendix D

> "[even if Laura and Eric were considered mature enough to freely exercise their religious beliefs, this does not dispel appellant's duty while the children are in their care, custody and control, to provide them with parental care direction and sustance."

The court based upon that is satisfied that the motion to dismiss based upon the age of the victim must be denied and dismissed at this level. This will not preclude a motion for a demurrer during the trial, in the event that the factual basis can be made out that would bring it within the confines that there was no duty of parental care, that she was not in the custody of her parents, or would take it out of the above-quoted aspect of the *Cottam* case.

BY THE COURT:

s/ Norman D. Callan
J.

Appendix D

IN THE COURT OF COMMON PLEAS OF
BLAIR COUNTY, PENNSYLVANIA

96 CR 1260

COMMONWEALTH OF PENNSYLVANIA

– vs –

DENNIS EUGENE NIXON, SR.

---

96 CR 1261

COMMONWEALTH OF PENNSYLVANIA

– vs –

LORIE ANN NIXON

PRESIDING JUDGE: — THE HONORABLE NORMAN D. CALLAN

* * *

ORDER

AND NOW, this 11th day of February, 1997, the above-captioned matter having come before this court on one of the omnibus pre-trial motions to dismiss, premised on the wording in the Child Protective Services Act, 23 Pa. C.S.A. b3, definition of child abuse, the court rejects embracing the caselaw from New Jersey. The court is satisfied with the

current status of Pennsylvania law as to Barnhart and Cottam, as to the duty of these parents and that their religion is not a defense in the respect as to the crimes alleged in this prosecution.

For that reason, the motion to dismiss is denied and dismissed.

BY THE COURT:

s/ Norman D. Callan
J.

(2)

Supreme Court, U.S.
FILED
MAR 28 2001
OFFICE OF THE CLERK

No. 00-1353

In The

Supreme Court of the United States

DENNIS E. NIXON and LORIE A. NIXON,

Petitioners,

v.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Pennsylvania

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

I. DOES SHANNON NIXON HAVE A "RIGHT TO REFUSE MEDICAL CARE" SUCH AS TO TERMINATE OR LIMIT THE PARENTAL DUTY TO PROVIDE THE MOST BASIC OF NEEDS, THAT BEING THE PROVIDING OF MEDICAL CARE?

II. DOES THE PROSECUTION AND CONVICTION OF THE NIXONS INVOLVE THEIR FREEDOM OF RELIGION EXCEPT AS A CONSEQUENCE OF THEIR REFUSAL TO PROVIDE MEDICAL TREATMENT FOR SHANNON NIXON?

TABLE OF CONTENTS

Page

Questions Presented for Review i

Table of Contents..... ii

Table of Authorities iii

Summary of the Argument..... 1

Argument 1

Reasons for Opposing the Granting of the Writ 1

I. SHANNON NIXON'S "RIGHT TO REFUSE MEDICAL CARE" HAS NEVER BEEN RECOGNIZED BY THE COURTS OF THIS LAND SUCH AS TO TERMINATE OR LIMIT THE PARENTAL DUTY TO PROVIDE THE MOST BASIC OF NEEDS, THAT BEING THE PROVIDING OF MEDICAL CARE..... 1

II. THE PROSECUTION AND CONVICTION OF THE NIXONS DOES NOT INVOLVE THEIR FREEDOM OF RELIGION EXCEPT AS A CONSEQUENCE OF THEIR RELIGIOUS REFUSAL TO PROVIDE MEDICAL TREATMENT FOR SHANNON NIXON 6

Conclusion 9

TABLE OF AUTHORITIES

Page

CASES

Bob Jones University v. United States, 461 U.S. 574, 76 L.Ed.2d 157, 103 S.Ct. 2017 (1983) 6

Hodgson v. Minnesota, 497 U.S. 417, 111 L.Ed.2d 344, 110 S.Ct. 2926 (1990) 2

Parham v. J.R., 442 U.S. 584, 61 L.Ed.2d 101, 99 S.Ct. 2493 (1979) 2

Prince v. Massachusetts, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944) 1, 4, 6, 7, 8

Troxel v. Granville, 147 Led.2d 49 (2000) 2, 3

United States v. Lee, 455 U.S. 252, 71 L.Ed.2d 127, 102 S.Ct. 1051 (1982) 8

Walker v. Superior Court, 47 Cal.3d 112, 763 P.2d 852 (Cal. 1988) cert. denied 491 U.S. 905, 109 S.Ct. 3186, 105 L.Ed.2d 695 (1989) 4, 9

Wisconsin v. Yoder, 406 U.S. 205, 32 L.Ed.2d 15, 92 S.Ct. 1526 (1972) 2

SUMMARY OF THE ARGUMENT

What is at issue here is not the Nixons' right to free exercise of their religion. What is at issue and has been prosecuted is the consequences of the Nixons' abdication of their parental responsibilities. The State is allowed to limit certain constitutional rights, including the right to free exercise of religion when a compelling state interest is involved. There is no greater compelling state interest than that of the continued health and life of its most vulnerable citizens, its children. The law established by *Prince v. Massachusetts*, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944), has never been overruled but only refined in the numerous cases which follow it. In this case, where the life of Shannon Nixon was in obvious jeopardy, the Nixons had no choice but to seek medical attention or at the very least notify the authorities concerning the precarious position of their daughter.

ARGUMENT

REASONS FOR OPPOSING THE GRANTING OF THE WRIT

I. SHANNON NIXON'S "RIGHT TO REFUSE MEDICAL CARE" HAS NEVER BEEN RECOGNIZED BY THE COURTS OF THIS LAND SUCH AS TO TERMINATE OR LIMIT THE PARENTAL DUTY TO PROVIDE THE MOST BASIC OF NEEDS, THAT BEING THE PROVIDING OF MEDICAL CARE.

The United States Supreme Court has recognized a right of privacy. The right has its roots in a number of various constitutional provisions. As indicated by the

Petitioner's argument, there are numerous rights guaranteed to individual citizens. The right of privacy has been balanced against the need of the States to ensure that the children of adults are provided for, especially when those children are sick or at death's door. "The State has a strong and legitimate interest in the welfare of its young citizens, whose immaturity, inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely." *Hodgson v. Minnesota*, 497 U.S. 417, 111 L.Ed.2d 344, 366-367, 110 S.Ct. 2926 (1990).

As stated by Justice Thomas in *Troxel v. Granville*, 147 L.Ed.2d 49, 70-71 (2000), "The constitutional protection against arbitrary state interference with parental right should not be extended to prevent the States from protecting children against the arbitrary exercise of parental authority that is not in fact motivated by an interest in the welfare of the child."[1]

It is apparent that a State has an ability to intervene in the parent-child relationship if such is to ensure the best interests of the child. Such an interest of the State is no more apparent than when the child is sick or at death's door. "Nonetheless, we have recognized that a State is not without constitutional control over parental discretion in dealing with children when their physical or mental health is jeopardized." *Parham v. J. R.*, 442 U.S. 584, 61 L.Ed.2d 101, 118, 99 S.Ct. 2493 (1979) (citations omitted).

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[1] The Justice referenced the consequences which a parent's decision would have upon the child. *Wisconsin v. Yoder*, 406 U.S. 205, 32 L.Ed.2d 15, 92 S.Ct. 1526 (1972).

While the Courts have recognized that minors do have some constitutional rights and are not under the absolute tyranny of their parents, those rights are severely limited. Minors, quite simply due to the lack of maturity and life experiences, do not have free access to everything to which an adult is entitled. A State has a vital interest in restricting certain activities to adults, either those over the age of eighteen or twenty-one. *Troxel v. Granville*, supra. Among these rights restricted to adults is the privilege to drive a motorized vehicle, the right to own and possess a firearm, the right to vote, the right to enter into contracts, the right to give consent for medical treatment as well as other health and safety issues. The list of rights and/or privileges which are restricted to adults is a long list indeed.

In the criminal law, this is perhaps best exampled by the fact that a confession made by a juvenile without the benefit of a parental guardian is presumptively invalid. This is in recognition of the State's belief that a minor has neither the requisite maturity or life experience necessary to ensure that a minor's rights are protected. That belief recognizes that a parent has certain duties and obligations when it comes to providing for the care of their children.

One of and the foremost of these parental obligations or duties is to provide medical care and treatment for a child. This is especially true when the child is in dire straights and at death's door. This is exactly the situation which was presented to the Nixons at that moment on Friday morning when Shannon Nixon was in a coma. The criminal laws, particularly as in this case, the Involuntary

Manslaughter and the Endangering of Welfare of Children statutes, lay out the consequences which fall to someone such as a parent who abdicates this responsibility for whatever reason. *Walker v. Superior Court*, 47 Cal.3d 112, 763 P.2d 852 (Cal. 1988), *cert. denied*, 491 U.S. 905, 109 S.Ct. 3186, 105 L.Ed.2d 695 (1989), citing *Prince v. Massachusetts*, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944). The State has such an interest in the minors' well-being that it can, should, and does penalize those who violate their parental duties. The mere fact that the Nixons exercise their freedom of religion should not impact upon their parental responsibilities to Shannon Nixon.

To quote from *Prince v. Massachusetts*, supra, at pages 652-653:

> But the family itself is not beyond regulation in the public interest, as against a claim of religious liberty. (citation omitted). And neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth's well-being, the State as parens patriae may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor, and in many other ways. Its authority is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience. Thus, he cannot claim freedom from compulsory vaccination for the child more than for himself on religious grounds. The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the ladder to ill health or death. (citation omitted). The catalogue need not

> be lengthened. It is sufficient to show, what indeed appellant hardly disputes, that the State has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare; and that this includes, to some extent, matters of conscience and religious conviction.

It is apparent that the State's interest in protecting the life of Shannon Nixon supercedes the Defendant's right to free exercise of their religion. It is apparent that the law is well settled in this area and that there is no real reason or basis upon which this Court should grant the writ.

Finally, the Respondent questions the ability of the Nixons to raise the constitutional rights of Shannon Nixon. If Shannon Nixon is a "mature minor" with a right to refuse medical care pursuant to her right of privacy, then how do the Nixons raise the constitutional rights of Shannon Nixon as a shield to absolve themselves of the consequences of their actions? There is no basis in State and/or Federal Law which gives another person the right to assert the rights of a third party. Quite simply, the Nixons have no standing to raise Shannon Nixon's constitutional rights, including the right to freedom, as a defense to the obligations upon them as parents to provide for the care and well-being of Shannon Nixon.

II. THE PROSECUTION AND CONVICTION OF THE NIXONS DOES NOT INVOLVE THEIR FREEDOM OF RELIGION EXCEPT AS A CONSEQUENCE OF THEIR REFUSAL TO PROVIDE MEDICAL TREATMENT FOR SHANNON NIXON.

As previously indicated, the prosecution of the Nixons and the decision of the Pennsylvania Supreme Court does not penalize the Petitioners' exercise of their religious beliefs. The conviction of the Nixons and the decision of the Pennsylvania Supreme Court impacts upon their parental obligations to care for their daughter. The prosecution does not directly impact upon the exercise of their religion as much as the consequences of that same religion. More importantly, as previously argued, what is being penalized is the abdication of the Nixons of their most basic parental duty to Shannon Nixon. The Commonwealth can limit the Nixons' right to free exercise of their religion when this absolute right infringes upon the well-being of their minor children. The Commonwealth has an obligation to step in and ensure that the only ones who make themselves out to be martyrs are those adults who have the requisite maturity and life experiences to make such a critical life decision. *Prince v. Massachusetts,* supra; *Bob Jones University v. United States,* 461 U.S. 574, 76 L.Ed.2d 157, 103 S.Ct. 2017 (1983). As the Court in *Bob Jones University v. United States,* supra, pages 180-181 stated, "This Court has long held the Free Exercise Clause of the First Amendment to mean absolute prohibition against the government regulations of religious beliefs (citations omitted). As interpreted by this

Court, moreover, the Free Exercise Clause provides substantial protection for lawful conduct grounded in religious belief (citations omitted). However, 'not all burdens on religion are unconstitutional . . . The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest.' (citations omitted). On occasion, this Court has found certain governmental interests so compelling as to allow even regulations prohibiting religiously based conduct." *Prince v. Massachusetts,* supra.

It cannot be said that there is a more compelling governmental interest than preventing the death of one of its minor citizens.

While the Petitioners have a right to raise their children in accordance with their beliefs, that same right carries with it certain duties to ensure that the best interests of their children are met. The best interests of their children are surely met by the continued viability of the children's lives free from the restraints generated by their religion. If the parents have a right to raise their child as they see fit, then they have an obligation and duty to ensure that they are not abdicating that parental responsibility.

The mere fact that the regulations governing Children and Youth Services do not qualify the Nixons' actions as child abuse, does not preclude a criminal prosecution for those who have put their freedom of religion above the best interests of the child. The mere fact that the Children and Youth Services regulations removes the Nixons' conduct from the definition of child abuse, does not make their decisions any less culpable under the

criminal law. As previously indicated, a parent is or parents are allowed to make martyrs of themselves. However, when parents, by the result of their decisions, make martyrs of their children, then the State has a duty and obligation to step in and ensure that those children are protected. *Prince v. Massachusetts*, supra. This conflict between the freedom of religion and parental duties is one which is in continual debate throughout the United States. However, as stated by *United States v. Lee*, 455 U.S. 252, 71 L.Ed.2d 127, 132, 102 S.Ct. 1051 (1982), "The State may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest." (citations omitted). As previously stated, when the health and life of a child is at risk, the Courts have supported this overriding governmental interest in protecting its citizens. Consequently, when a parent's action or inaction endangers the welfare of a child or children, then that action and/or inaction can be penalized by the States.

There are limits to every right that one as a citizen enjoys. However, when the exercise of those rights affects others, then the State has an obligation and duty to step in. This is true even if the individual who is exercising the said right is an adult. If that is true of an adult, then how can it be that a parent is exempt from that intervention? One cannot imagine a more basic obligation of a State than the protection of its citizens. When the actions of an adult or non-action of an adult, whether it be parent or guardian, affect and impact upon the health and well-being of a child, then the State is not only within its rights but obligated to intervene to ensure the continued health and well-being of those same children. If, as in this case,

the Nixons abdicate those most basic of parental obligations, then they can indeed suffer the consequences of that abdication. *Walker v. Superior Court,* supra. There is no greater need for the fulfillment of parental duty by the Nixons then in that moment when Shannon Nixon is in a coma at death's door and unable to care for herself. In fact, it is impossible to tell what Shannon Nixon's request would have been on Friday morning when she was in a coma. There is no greater crystallization of that parental responsibility than in that moment when Shannon Nixon cannot take care of herself. The abdication of the Nixons' responsibility can, notwithstanding the rights to free exercise of religion, result in criminal prosecution and the consequences of the same.

CONCLUSION

For all the foregoing reasons, the Respondent respectfully pray that the Petitioner's Petition for Writ of Certiorari be denied.

Respectfully submitted,

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